RECENT IMPORTANT DECISIONS

CEMETERIES—CIVIL LIABILITIES—TORTS.—Plaintiff sued defendant corporation for malicious prosecution by its sexton and secretary. Defendant was organized for cemetery purposes, not for profit, and without capital stock. The state general code provided that such an association might acquire and hold not exceeding one hundred acres of land, and also take any gift or devise, or the income thereof, in trust, "all of which shall be exempt from execution." *Held,* one justice dissenting, under the maxim *"expressio unius, exclusio alterius"* the statute expressly excluded other property from execution. Hence defendant, though a charitable organization, was liable in a tort action. *Canton Cemetery Association* v. *Slayman* (Ohio, 1918), 121 N. E. 819.

One line of cases holds that there is no tort liability whatsoever of a charitable organization, whether the person injured be a beneficiary, an employe, or a third person. *Gable* v. *Sisters of St. Francis,* 227 Pa. 254. The basis of this is that the corporation is merely trustee of a fund for the public benefit, that since it may not divert the fund by direct acts, it should not be allowed to do so by indirect. *Fordyce* v. *Library Ass'n.,* 79 Ark. 550. These courts allow only the action against the tortfeasor himself. *Perry* v. *House of Refuge,* 63 Md. 20. That the wrongdoer may often be penniless is the misfortune of the injured party, since "the law does not undertake to provide a solvent defendant for every wrong done." *Vermillion* v. *Woman's College,* 104 S. C. 197. In distinct conflict is the view taken in *Glavin* v. *Rhode Island Hospital,* 12 R. I. 411, where the plaintiff recovered against a charitable institution for unskilful treatment. Subsequent to this decision, the Rhode Island legislature created an exemption for hospitals sustained by charity. Gen. Laws of R. I., Cap. 213, Sec. 38. See *Parks* v. *Northwestern Univ.,* 218 Ill. 381. Partial exemption obtains in other courts, which hold that the corporation is liable for the torts of its servants only where it has failed to use due care in hiring them. The basis of this view may be that the foundation of the *respondeat superior* doctrine is that the servant works for the master's benefit, and that it cannot be applied where the servant works instead for the benefit of the public. *Hearns* v. *Waterbury Hospital,* 66 Conn. 98. There is still another line of cases: that the charitable organization is liable to employees and third persons, but not to beneficiaries, on the grounds that one who avails himself of the charity assumes the risks incident thereto. *Downes* v. *Harper Hospital,* 101 Mich. 555. However correct the decision of the principal case may be as a rule of abstract justice, it is hardly logical from the course of reasoning laid down by the court. That the legislature permitted some of defendant's property to be taken on execution may have been no more than a means of satisfying judgments in contract actions. The right to sue a charitable organization in contract is well settled. *Armstrong* v. *Wesley Hospital,* 170 Ill. App. 81. A situation similar to that in the principal case arose in *Abston* v. *Waldon Academy,* 118 Tenn. 24. There the charter of the defendant corporation provided that it might sue and be sued. The

court denied recovery in tort, on the grounds that there was abundant scope for the operation of the clause in the charter without interfering with the principle that a charitable organization could not be sued in tort.

COMMON CARRIERS—APPLICATION OF HOURS OF SERVICE ACT TO EMPLOYEES OF TERMINAL CO.—Does the Hours of Service Act apply to a Terminal Company, operating a union freight station under contracts with ten railroads and several steamship companies; owning freight sheds and yards and connecting tracks, also tugs and car floats, but no cars; leasing two switching engines and employing crews, but carrying no passengers, and receiving goods only as agent of the railroads and steamship lines? *Held,* that such a company was a common carrier within the meaning of the Act, thus reversing 239 Fed. 287. *United States* v. *Brooklyn Eastern District Terminal,* (U. S. Supreme Court, March 24, 1919).

The court below held that the switching crews of defendant were clearly within the object of the Hours of Service Act, but as that act was limited to "common carriers" the point was too plain to need elaboration that it did not apply to defendant. The Supreme Court finds it too plain to call for much elaboration, that this unanimous conclusion of the Circuit Court of Appeals, First Circuit, is wrong. It does not depend on any nice distinctions of definite or corporate power, or of agency, but "whether Congress, in declaring the Hours of Service Act applicable to any common carrier or carriers, their officers, agents and employees, engaged in the transportation of passengers or property by railroad, made its prohibitions applicable to" defendant. The decision accords with the general principle that the public is not concerned with the agencies employed by a carrier to perform its duties, they are all impressed with the public nature of the carrier, and as to such public duties, the liability is joint and several. No duty or liability should be escaped by dividing the service with other agencies. In addition to the cases cited in the opinion, see such cases as, *Christenson* v. *American Express Company,* 15 Minn. 270 (Express Companies); *Robinson* v. *Southern Railroad Company,* 40 App. Cas. (D. C.) 549, Ann. Cases, 1914 C 959 (Sleeping Car Companies); *C. M. & St. P. Ry. Co.* v. *Minneapolis Civic Association,* 247 U. S. 490 (June, 1918, involving separate charges over terminal tracks).

COMMON CARRIERS—DISCRIMINATION BY GRANTING SPECIAL PRIVILEGES.—Plaintiff bought a railway ticket to a station at which his train did not stop. He brought an action for damages caused by requiring him to change cars so as to take a train stopping at his station. *Held,* that under such circumstances it was the duty of the passenger to stop off and wait for such train. Defendant company could not stop the other train at that station for plaintiff without violating the Federal Statute forbidding granting to any person any privileges in the transportation of persons or property, except such as are specified in the tariff. *May* v. *S. A. L. Ry.* (S. C. 1918), 96 S. E. 482.

The common law rule that charges must be reasonable did not require that they should be equal. *Fitchburg Ry. Co.* v. *Gage,* 12 Gray 393. If the